

## **REMARKS**

Claims 1-42 were presented for examination and were rejected. Claims 1, 8, 11, 14 and 16 are amended. Claims 7, 13, 15, 18 and 39-42 are canceled. No new matter is being added.

The Examiner objected to the Declaration previously submitted, because it lacked the mailing address of the inventor. A Supplemental Declaration is included with this Amendment providing the inventor's address.

The Examiner rejected claim 11 under 35 U.S.C. 112. Claim 11 is amended to correct a typographical error in its dependency. Claim 11 now depends from claim 10. The Examiner is asked to withdraw the rejection.

The Examiner rejected claim 7 under 35 U.S.C. 103 in view of Davies and Official Notice. The limitations of claim 7 have been incorporated into claim 1 by this amendment.

Claim 1 now recites:

A system for searching data in a distributed computing network of sellers' commercial databases, the system comprising:

a distributed computing network comprising a plurality of sellers' commercial databases, said seller's commercial databases commonly related to an industry,

at least one buyer's node adapted to translate a buyer's first query,

a commercial search agent adapted to receive the buyer's first query regarding a selected item, said item one of a product or service, said commercial search agent in communication with said plurality of sellers' commercial databases, and said commercial search agent further adapted to search said plurality of sellers' commercial databases for information related to said selected item; and

at least one intelligent negotiation agent in communication with said commercial agent, said intelligent negotiation agent for receiving said information related to said selected item and for engaging in a negotiation for procurement of said selected item.

The claimed invention is not obvious in view of Davies in combination with Official Notice. As the Examiner admits, there is no suggestion in Davies of "at least one intelligent negotiation agent in communication with said commercial agent, said intelligent negotiation

agent for receiving said information related to said selected item and for engaging in a negotiation for procurement of said selected item”, as claimed. For this reason the Examiner appears to have taken Official Notice of this feature in order to combine it with Davies.

The claimed elements would not have been common knowledge at the time of the invention. Therefore, the Examiner has improperly taken Official Notice in rejecting these claims.

The features of claims 1-6 are not capable of instant and unquestionable demonstration as being well-known because there is no evidence of prior art disclosing all of the claimed elements. MPEP 2144.03A recites

“...It would not be appropriate for the examiner to take official notice of facts without citing a prior art reference where the facts asserted to be well known are not capable of instant and unquestionable demonstration as being well-known.”

For example, there is no evidence of prior art disclosing the claimed element of “at least one intelligent negotiation agent in communication with said commercial agent, said intelligent negotiation agent for receiving said information related to said selected item and for engaging in a negotiation for procurement of said selected item.” Applicants respectfully challenge the rejection in accordance with MPEP 2144.03C which recites,

“If applicant challenges a factual assertion as not properly officially noticed or not properly based upon common knowledge, the Examiner must support the findings with adequate evidence.”

If the Examiner is to maintain the rejection based on Official Notice, Applicant respectfully requests that the Examiner support the rejection with adequate documentary evidence. If the Examiner is relying on personal knowledge to support the finding of what is known in the art, Applicant requests that the Examiner provide an affidavit or declaration setting

forth specific factual statements and explanation to support the findings, as required by MPEP 2144.03C.

Applicant respectfully submits that claims 1-6 are patentably distinguishable over the cited reference.

Similarly, claim 8 is amended to include the limitations formally found in claim 13, which the Examiner rejected over the combination of Davies, Kleinberg, and Official Notice.

Claim 8 as amended recites:

A method for searching data in a distributed computing network of sellers' commercial databases, the method comprising:

receiving a buyer's first query regarding a selected item, said item one of a product or service,

performing an automated search on a distributed computing network for information related to said selected item, said distributed computing network comprising a plurality of sellers' commercial databases, said plurality of sellers' commercial databases commonly related to an industry; and

receiving from at least one of said plurality of sellers' commercial databases a risk management option comprising at least one contract contingency authorizing a seller to pay a buyer a penalty if said seller elects to sell said selected item to another buyer.

The claimed invention is not obvious in view of Davies in combination with Kleinberg and Official Notice. As the Examiner admits, there is no teaching in Davies of "receiving from at least one of said plurality of sellers' commercial databases a risk management option comprising at least one contract contingency authorizing a seller to pay a buyer a penalty if said seller elects to sell said selected item to another buyer". The Examiner then asserts that Kleinberg discloses the applicability of data and data mining to sales transactions, advertising and inventory. However, even if true, the combination of applying data mining to sales transactions with Davies does not make obvious the claimed invention—for example, the

combination does not disclose receiving a risk management option having a contract contingency from a seller's commercial database.

Next, the Examiner takes Official Notice that "it is old and well-known for businesses to designate subject areas considered important for business". Again, even the combination of this Official Notice with Davies and Kleinberg does not make obvious the claimed invention. The Notice taken by the Examiner is simply too broad to disclose or suggest the explicitly claimed feature of "receiving from at least one of said plurality of sellers' commercial databases a risk management option comprising at least one contract contingency authorizing a seller to pay a buyer a penalty if said seller elects to sell said selected item to another buyer". In addition, the Examiner has again improperly taken Official Notice in rejecting the claim, for the reasons discussed above with respect to claim 1. Applicant respectfully requests that the Examiner either support the rejection with adequate documentary evidence or provide an affidavit or declaration setting forth specific factual statements and explanations to support the findings as required by MPEP 2144.03C.

Applicant respectfully submits that claim 8 and its dependent claims 9-12 are patentable over the cited references and should be allowed.

The Examiner rejected claim 15 under 35 U.S.C. 103(a) as being unpatentable over Moore. The limitations of claim 15 have now been incorporated into claim 14, which as amended recites:

A system for procurement that communicates over a distributed network, the system comprising:

one or more memories for storing a list of individual product items and individual service items,

an intelligent commercial search agent in communication with said one or more memories, and

one or more seller showcase databases in communication with said commercial search agent,

wherein, when one or more of said seller showcase databases receives from said commercial search agent a request to receive bids to sell a selected item specified from said list, said one or more seller showcase databases submits that bid to said commercial search' agent; and

an intelligent analytical agent for mining data related to a selected item from said list, said mining from at least one of a plurality of market databases, said analytical agent for generating a subset of data that most closely conforms to a set of preprogrammed item parameters, and said analytical agent in communication with said commercial search agent for providing thereto said subset of data.

In rejecting claim 15, the Examiner admitted that Moore fails to disclose “an intelligent analytical agent for mining data related to a selected item from said list, said mining from at least one of a plurality of market databases, said analytical agent for generating a subset of data that most closely conforms to a set of preprogrammed item parameters, and said analytical agent in communication with said commercial search agent for providing thereto said subset of data”, instead taking Official Notice that such a limitation is old and well known. For the reasons outlined above with respect to claims 1 and 8, the Examiner is asked to either support the rejection with adequate documentary evidence or provide an affidavit or declaration setting forth specific factual statements and explanations to support the findings as required by MPEP 2144.03C.

Applicant respectfully submits that claim 14 is patentable over the cited references and should be allowed.

The Examiner rejected claim 18 under 35 U.S.C. 103(a) as being unpatentable over Moore. The limitations of claim 18 have now been incorporated into claim 16, which as amended recites:

A method for procurement using computers that communicate over a distributed network, the method comprising:

receiving from one of a plurality of buyer's intelligent agents registered with a cooperative communications network a request to receive bids to sell a selected item specified from a list of individual product items and individual service items, said request for bids including a set of item parameters, said set including quality, and

receiving from at least one of a plurality of seller's intelligent agents registered with a cooperative communications network an automated bid to sell said selected item, said bid responsive to said request.

In rejecting claim 18, the Examiner admitted that Moore fails to disclose "receiving from one of a plurality of buyer's intelligent agents registered with a cooperative communications network a request to receive bids to sell a selected item specified from a list of individual product items and individual service items, said request for bids including a set of item parameters, said set including quality," instead, taking Official Notice of a set that includes quality. For the reasons outlined above with respect to claims 1, 8 and 14, the Examiner is asked to either support the rejection with adequate documentary evidence or provide an affidavit or declaration setting forth specific factual statements and explanations to support the findings as required by MPEP 2144.03C.

Applicant respectfully submits that claim 16 and its dependent claims 17 and 19-38 are patentable over the cited references and should be allowed.

//

//

//

//

//

//

The Examiner is asked to issue a Notice of Allowance for all claims now pending. The Examiner is invited to contact the undersigned attorney by telephone, mail or electronic mail in order to advance prosecution. Applicants acknowledge that a copy of any electronic mail communications will be made of record in the application file per MPEP § 502.03.

Respectfully submitted,

NEAL E. SOLOMON

Dated: December 3, 2006

By: /Daniel R. Brownstone, 46,581/

Daniel R. Brownstone, Reg No.: 46,581  
Attorney for Applicant  
Fenwick & West LLP  
801 California Street  
Mountain View, CA 94041  
Tel.: (415) 875-2358  
Fax: (415) 281-1350